

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

BRENDA MCKINNEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Defendant.

Case No. 1:23-cv-01372-RLY-MJD

JOINT REPORT ON THE STATUS OF DISCOVERY

Pursuant to the Court's December 6, 2023 Minute Order (ECF No. 39), the parties jointly submit the following Joint Report on the Status of Discovery in advance of the February 2, 2024 status conference.

1. A detailed description of all discovery completed to date:
--

- The parties agreed that discovery produced in *Manassa* will be deemed produced in this action.
- The parties agreed the deposition testimony obtained in *Manassa* may be used in this action as if the depositions had occurred in and for purposes of this action.
- November 20, 2023: The parties exchanged initial disclosures.
- November 27, 2023: Plaintiff filed her preliminary witness and exhibit list.
- December 4, 2023: The NCAA filed its preliminary witness and exhibit list.
- December 22, 2023: Plaintiff served her First Requests for the Production of Documents (First RFPs) on the NCAA.

- January 2, 2024: The NCAA served its First Set of Interrogatories, First Set of Requests for Production of Documents, and First Set of Requests for Admission on Plaintiff (collectively the “NCAA’s First Set of Discovery Requests”).
- January 22, 2024: The NCAA served its responses and objections to Plaintiff’s First RFPs.

2. A detailed description of all discovery presently scheduled or pending, including the due dates for any pending discovery requests and the scheduled dates for any depositions, and the identity of the counsel responsible for completing such discovery.

Plaintiff’s responses to the NCAA’s First Set of Discovery Requests are due February 1, 2024.

3. A detailed description of any discovery disputes presently pending, including the status of the resolution of the dispute and the identity of the counsel responsible for resolving the dispute.

Plaintiff:

- The parties have continued to discuss the NCAA’s proposed edits to the ESI Protocol/Order in *Manassa*. Since the last discovery conference, the parties have exchanged redlines regarding the ESI Protocol and met and conferred regarding the competing proposals. Three main areas remain in dispute. The NCAA is not producing emails until the ESI Protocol is resolved. In Plaintiff’s view, these issues are ripe for resolution by the Court if the NCAA does not agree to Plaintiff’s proposals:
 - **Email Threading:** The NCAA proposes that, when multiple email messages are part of a single chain, parties need only produce the most inclusive (e.g., last in time) email. Plaintiff believes this deprives the receiving party of necessary metadata and does not produce documents in a reasonably usable form or as they are maintained in the ordinary course of business.
 - **Privilege Log Exemptions:** The parties agree that privilege logs may omit certain

communications from their privilege logs – e.g., certain privileged communications with counsel regarding this litigation. Plaintiff, however, believes those communications should be logged if third parties are included on them.

- The parties have disputes regarding the NCAA’s privilege designations (made in *Manassa* and adopted in this litigation). Plaintiff is evaluating those designations to identify the specific documents she wishes to challenge.

Attorneys Beth Fegan, Melissa Ryan Clark, and Jessica Meeder are responsible for resolving these disputes.

The NCAA:

- Regarding the ESI Protocol/Order, the parties have and are continuing to discuss the issues of email threading, privilege-log production, and privilege-log exemptions. At present, the NCAA is in favor of email threading, and Plaintiff is not. Plaintiff proposed that the NCAA’s privilege log list communications that include third-parties.
 - Plaintiff and the NCAA are reviewing the issue of email threading. Specifically, the NCAA is reviewing the issue to address Plaintiff’s concerns about metadata and the usability of produced documents. The NCAA is reviewing Plaintiff’s proposal that the privilege log list communications that include third-parties. The NCAA will produce ESI when the parties finalize the protocol.

In the NCAA’s view, these items are not ripe for Court resolution.

- The NCAA awaits Plaintiff’s challenges to specific entries to the *Manassa* privilege log.

The NCAA’s counsel responsible for resolving these disputes are Brian Casey and Alicia Barrs.

4. A detailed description of all discovery that is planned to be completed within the 28-day period following the report, including the identity of the counsel responsible for completing such discovery.

Plaintiff:

In the next 28 days, Plaintiff will respond to Defendant's discovery requests. Plaintiff may also serve additional written discovery in the next 28 days. Plaintiff also anticipates requesting a court conference regarding the ESI Protocol, and seeking leave to resolve the ESI Protocol, if the terms of that document is not resolved in the near future

Attorneys Beth Fegan, Melissa Ryan Clark, and Jessica Meeder are responsible for completing such discovery.

The NCAA:

In the next 28-day period, the NCAA anticipates continued discussions about the ESI Protocol/Order and privilege log. The NCAA also anticipates discussions about Plaintiff's discovery responses that are due February 1st.

The NCAA's counsel responsible for conducting such discovery are Brian Casey and Alicia Barrs.

5. A description of all known discovery remaining to be completed in this matter, including a proposed timetable for the completion of such discovery and the identity of the counsel responsible for completing such discovery.

Plaintiff:

Plaintiff will serve additional RFPs, interrogatories, requests for admission, and deposition notices and subpoenas. Plaintiff anticipates Defendant will conduct discovery of her, e.g., through document requests or depositions. Discovery will be completed in accordance with the Court's November 2, 2023 Case Management Plan ECF No. 30. The parties will identify more specific

time tables as discovery progresses.

Attorneys Beth Fegan, Melissa Ryan Clark, and Jessica Meeder are responsible for completing such discovery.

The NCAA:

The NCAA will depose Plaintiff after Plaintiff has completed her document production and other discovery responses. The NCAA anticipates completing its deposition of Plaintiff prior to the parties' class-certification briefing deadlines. The NCAA also anticipates serving additional sets of discovery requests as the case progresses.

The NCAA's counsel responsible for conducting such discovery are Brian Casey and Alicia Barrs.

6. Any other discovery issues any party believes should be brought to the attention of the Court so as to avoid any further delays in the completion of discovery in this matter.

Plaintiff: None.

The NCAA: None.

DATED: January 30, 2024

Respectfully submitted,

By: /s/ Melissa Clark (with permission)

Elizabeth A. Fegan (admitted *pro hac vice*)

beth@feganscott.com

FEGAN SCOTT LLC

150 S. Wacker Dr., 24th Floor

Chicago, IL 60606

Telephone: (312) 741-1019

Facsimile: (312) 264-0100

Melissa R. Clark (admitted *pro hac vice*)

melissa@feganscott.com

FEGAN SCOTT LLC

140 Broadway, 46th Fl.

New York, NY 10005

Telephone: (347) 353-1150

Facsimile: (312) 264-0100

Jessica H. Meeder (admitted *pro hac vice*)
jessica@mayjung.com
MAY JUNG LLP
2006 MLK Ave., SE, Suite 210
Washington, DC 20020
Telephone: (202) 916-7289
Facsimile: (202) 618-8282

William N. Riley, Bar No.: 14941-49
Russell B. Cate, Bar No.: 27056-29
Sundeep Singh, Bar No. 36591-29
RILEYCATE, LLC
11 Municipal Drive, Ste. 320
Fishers, IN 46038
Telephone: (317) 588-2866
Facsimile: (317) 458-1875
wriley@rileycate.com
rcate@rileycate.com
ssingh@rileycate.com

Attorneys for Plaintiff and the Proposed Class

/s/ Brian E. Casey
Brian E. Casey
brian.casey@btlaw.com
V. Chisara Ezie-Boncoeur
cezie@btlaw.com
BARNES & THORNBURG LLP
201 S. Main Street
South Bend, IN 46204
Telephone: 574-233-1171
Facsimile: 574-237-1125

Alicia Raines Barrs
Alicia.Rainesbarrs@btlaw.com
Anna Kalinina (admitted *pro hac vice*)
Anna.Kalinina@btlaw.com
Jake Winslett (admitted *pro hac vice*)
Jake.Winslett@btlaw.com
2121 N. Pearl Street, Suite 700
Dallas, TX 75201
Telephone: (214) 258-4200
Facsimile: (214) 258-4199

Attorneys for Defendant the NCAA